




Council Communication

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Ajay Joshi, Chief Information Officer (480-503-6884)

THROUGH: Marc Skocypec, Assistant Town Manager (480-503-6862) 

MEETING DATE: April 19, 2012

SUBJECT: Amended and Restated Intergovernmental Agreement (IGA) 2008-3002-0359 and Governance Document of the TOPAZ Regional Wireless Cooperative (TRWC).

STRATEGIC INITIATIVE: Community Livability

Through this partnership, Gilbert, Mesa, Apache Junction, Queen Creek and other municipal agencies build and sustain a public safety grade radio communications network for the collective safety of our communities.

LEGAL REVIEW

☒ Complete

☐ N/A

FINANCIAL REVIEW

☒ Complete

☐ N/A

RECOMMENDED MOTION

MOTION TO APPROVE AND EXECUTE THE AMENDED INTERGOVERNMENTAL AGREEMENT 2008-3002-0359 AND GOVERNANCE AGREEMENT BETWEEN THE TOWN OF GILBERT AND TOPAZ REGIONAL WIRELESS COOPERATIVE.

BACKGROUND/DISCUSSION

This agreement supersedes the agreement that was approved at the December 8, 2012 council meeting. The City of Mesa made small amendments to dates and definitions in the IGA that require the Town to approve the IGA again.

TRWC Background

On September 16, 2008 the Town of Gilbert approved the IGA with TOPAZ to participate in the regional wireless cooperative to plan, design, construct, operate, maintain and finance the public safety grade radio network which links multiple agencies and provides dispatch and communication services for their police, fire and other first responders. Over the last three years, the participation in TRWC has grown to twenty (20) agencies. The growth along with better technology has required some amendments to the original IGA. Any changes to the IGA require Council approval. TRWC is governed by a Board of Directors and oversight is provided by various Executive and Technical Committees.

The four proposed amendments made to the IGA are:

- A better accounting model
- Adding Rio Verde as a voting member agency
- Streamlining TRWC member additions
- Improved risk and liability provisions

The IGA was reviewed for form by Attorney (Anja Wendel).

FINANCIAL IMPACT

The change in the accounting model from radio counts to actual airtime usage will be done at the start of FY2013. An evaluation of our previous six months of airtime usage indicates that the financial impact will be minimal for Gilbert. The new model will enable Gilbert to maintain radios in Public Works for emergency purposes without paying for them on a monthly basis. Having more agencies join and participate in the TRWC will redistribute the overall costs, resulting in a lesser burden per agency over the long term. It also enables us to provide emergency radio dispatch services to a wider section of our population. The total projected cost for this project in FY 2013 is \$337,000 and will be budgeted for in the General Fund..

The financial impact was reviewed by Nicole Daily, Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval.

Respectfully submitted,



For Ajay Joshi
Chief Information Officer

Attachments and Enclosures:

1. Council Communications for the approval of the original IGA on September 16, 2008
2. Amended Intergovernmental Agreement 2008-3002-0359 and Governance Agreement. (47 pages)

TOWN OF GILBERT COUNCIL COMMUNICATION	7
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TO: HONORABLE MAYOR & COUNCILMEMBERS
FROM: COLLIN DEWITT, FIRE CHIEF
THROUGH: GEORGE PETTIT, MANAGER
MEETING DATE: SEPTEMBER 16, 2008
SUBJECT: INTERGOVERNMENTAL AGREEMENT WITH MESA FOR
DISPATCH AND COMMUNICATION SERVICES

RECOMMENDED MOTION

MOTION FOR MAYOR AND COUNCIL TO AUTHORIZE THE TOWN TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE CITY OF MESA FOR DISPATCH AND COMMUNICATION SERVICES FOR THE FIRE AND POLICE DEPARTMENTS.

BACKGROUND/DISCUSSION

The City of Mesa has provided communication, maintenance and 9-1-1 dispatch services for the Town of Gilbert Fire Department since 1993. More recently, the Gilbert Police Department has also taken advantage of the Mesa communication infrastructure. This IGA (contract no. 2008-3002-0359) is a continuation of that relationship and provides for a process to plan, design, construct, operate, maintain and finance the Wireless Cooperative Network (TOPAZ) that links Mesa, Gilbert, Apache Junction and Queen Creek public safety departments.

FINANCIAL IMPACT

The fees for participation in the Mesa communication and dispatch system are based upon a subscriber (per unit) and utilization (per call) cost. These fees will increase annually with growth of the departments and calls for service. The IGA also provides for an incremental increase in fees that will arrive at cost recovery for Mesa.

STAFF RECOMMENDATION

Staff recommends approval of the IGA.

Respectfully submitted,



Collin DeWitt
Fire Chief

Attachments and Enclosures:

**Intergovernmental Agreement to Plan, Design, Construct, Operate, Maintain, and Finance the
TOPAZ Regional Wireless Cooperative Network (Contract no. 2008-3002-0359)**

When Recorded Return To:
 William H. Anger
 Engelman Berger, P.C.
 3636 N. Central Ave., Suite 700
 Phoenix, AZ 85012

**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
 PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
 THE TOPAZ REGIONAL WIRELESS COOPERATIVE NETWORK**

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PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE TOPAZ REGIONAL WIRELESS COOPERATIVE NETWORK**

1. Parties. This Amended and Restated Intergovernmental Agreement ("Agreement") is entered into by and between the City of Mesa, the City of Apache Junction, Apache Junction Fire District, the Town of Gilbert, the Town of Queen Creek and the Rio Verde Fire District (the "Parties").

2. Recitals.

2.1. The City of Mesa, the City of Apache Junction, Apache Junction Fire District, the Town of Gilbert and the Town of Queen Creek entered into an Intergovernmental Agreement to Plan, Construct, Operate, Maintain and Finance the TRWC Network Contract Number 2008-3002-0359 and dated August 7, 2008 (the "August 7, 2008 Agreement").

2.2. This Agreement supercedes and replaces in its entirety the August 7, 2008 Agreement and the Governance Agreement dated April 8, 2008 attached as Exhibit A to the August 7, 2008 Agreement.

2.3. The Parties enter into this Agreement for the purpose of planning, designing, constructing, operating, maintaining and financing the TRWC.

2.4. The Parties are authorized to enter into this Agreement by the joint exercise of powers provisions of Title 11, Chapter 7, Article 3 (§§ 11-951 et seq.), Arizona Revised Statutes and the authorization of their legislative or other governing bodies.

2.5. The Parties agree to establish the TRWC, an unincorporated association of the Parties, to jointly and cooperatively exercise their powers to achieve the purposes specified in paragraph 2.3.

2.6. The TRWC shall use its reasonable efforts, through cooperation and the pooling of common resources, to improve communications and operations among various public safety and public service agencies.

2.7. The rules and policies governing the TRWC's regulation and management are set forth in a governance document ("Governance Agreement"), which is attached to this Agreement as Exhibit A and incorporated herein and made a part of this Agreement by this reference. Certain terms that are defined in the Governance Agreement are used in this Agreement. Those terms shall have the same meaning in this Agreement as such terms are defined in the Governance Agreement.

2.8. It is the Parties' intention that the Governance Agreement be enforceable to the same extent as this Agreement. The Governance Agreement shall be subject to amendment as provided herein and shall be valid for the duration of this Agreement. The Governance Agreement is approved by all Parties and shall be binding upon any Parties that are admitted after the initial Parties. No additional Parties shall be admitted to the TRWC without first agreeing to be as bound by the Governance Agreement as are the Parties hereto.

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3. Term and Duration of Agreement; Dissolution.

3.1. The "Effective Date" of this Agreement is May 1, 2012. The initial term of this Agreement is five (5) years commencing on the Effective Date and ending on April 30, 2017; thereafter, the Agreement will automatically renew for terms of five (5) years. All Parties shall execute this Agreement and comply with the requirements of A.R.S. § 11-952, which includes appropriate action by the legislative or other governing body of the Party for the approval of the Agreement, determination by the Party's attorney that the Agreement is within the powers and authority of the Party, and the proper filing of the Agreement. This Agreement shall continue until such time as the TRWC is dissolved.

3.2. The Parties do not anticipate that the TRWC will be dissolved until it is no longer desirable and feasible for the TRWC to operate the Network or the Network is transferred to another entity.

3.3. If the Parties dissolve the TRWC other than by transferring the Network to another entity, the assets of the TRWC shall be returned to the Members in proportion to their contributions to the TRWC as determined in section 10.2 of the Governance Agreement.

4. Manner of Financing.

4.1. The cost of planning, designing, constructing, operating and maintaining the Network shall be paid in the manner specified in the Governance Agreement.

4.2. Each Party agrees to timely pay its share of the cost of planning, designing, constructing, operating and maintaining the Network as specified in the Governance Agreement. Each Party shall render its amounts payable to the TRWC no later than thirty (30) days from the invoice date. The TRWC may collect interest at the rate of one percent (1 %) per month for payments not received thirty (30) days from the invoice date. The interest collected shall be deposited in the operating and maintenance budget and used to offset the costs of operation and maintenance.

4.3. It will be the responsibility of each Party to this Agreement to take the appropriate steps in conformity with state or local laws to ensure that it appropriates sufficient funds to cover the obligations it assumes under this Agreement. Each Party recognizes that the performance by the Parties under this Agreement may be dependent upon the appropriation of funds to or by that Party. Should any Party fail to appropriate or fail to be appropriated the necessary funds, that Party may withdraw from this Agreement as specified in Section 6 on the last day of the fiscal period for which funds are legally available and, notwithstanding anything to the contrary in this Agreement or Section 5.10 of the Governance Agreement, subject to Board of Directors approval, shall forfeit all or a portion of the equipment and real property owned by such Member that is used in the Network as determined by the Board of Directors. Each Party agrees to give notice to the other Parties as soon as reasonably possible after the unavailability of funds comes to the Party's attention. Except as otherwise provided in this Section 4.3, the ownership of equipment and real property that is used in the Network shall be governed by Section 5.10 of the Governance Agreement.

4.4. Each Party understands and acknowledges that claims and lawsuits may be filed for damages resulting from acts or omissions in connection with planning, designing,

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constructing, operating, maintaining and financing the Network or that other unforeseen costs and expenses may be incurred in connection with the planning, designing, constructing, operating, maintaining and financing the Network. The Parties agree that all damages, costs and expenses not specifically provided for in this Agreement, shall be shared by the Parties in proportion to each Party's share of the total weighted votes, in accordance with Section 4.3.6.3 of the Governance Agreement, at the time the claim or lawsuit, whichever first occurs, is first served on any Party or the unforeseen costs or expenses were incurred. Each Party shall promptly notify the TRWC and the Administrative Manager upon receipt of a claim or lawsuit relating to the Network. The Administrative Manager shall take the lead role on behalf of the TRWC in coordinating the investigation and defense of any claim or lawsuit made in connection with planning, designing, constructing, operating, maintaining or financing the Network. Nothing in this section shall preclude any Party, at its expense, from providing its own legal counsel in connection with any claim or lawsuit made in connection with planning, designing, constructing, operating, maintaining or financing the Network. Claims and lawsuits include any claims, losses, liability, costs, or expenses (including reasonable attorneys fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage.

4.5. The Administrative Manager subject to Board of Directors approval may apply for such federal, state or other grants as are made available for the planning, designing, constructing, operating, maintaining and financing the Network. The Administrative Manager may submit the grant application on behalf of the TRWC in accordance with applicable laws, rules, regulations and procedures. Any grant funds received will be used to reduce the cost of the project for which a grant application was submitted. The application for or the award of a grant shall not relieve a Party of its obligation to pay costs billed by the TRWC as provided in this Agreement.

4.6. Any Party that intends to individually submit a grant application that may benefit the TRWC or the Network shall first submit its proposal and grant application to the TRWC for its recommendation. With approval of the Board of Directors, the Party may submit its application to obtain the grant funding. Acceptance and use of any grant funds so obtained for the TRWC and the Network is subject to the discretion and approval of the Board of Directors. A Party who applies for, is awarded, and accepts grant funds under this paragraph 4.6 is individually responsible for meeting all terms, conditions and obligations of the grant.

4.7. The TRWC's Board of Directors shall adopt procurement procedures.

4.8. The TRWC's Board of Directors shall determine what insurance coverage is appropriate to protect the Parties from risks concerning the TRWC and the Network. The Board of Directors shall obtain such insurance on behalf of the TRWC. In deciding what insurance coverage and indemnities are appropriate, the Board of Directors may elect to self-insure for all or a portion of the risks.

4.9. The Parties understand and acknowledge that certain Network equipment, hardware, software and other personal property that is held jointly and owned in common by the Parties will become in time unfit or unnecessary for use by the TRWC. To provide for the disposal of such surplus Network personal property during the term of this Agreement, each Party agrees to obtain from its legislative or other governing body by ordinance, resolution or other applicable legal action, appropriate authorization enabling the TRWC to sell by public auction, sealed bids, or negotiation any and all surplus Network personal property.

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5. Obligations as Members. Each Party agrees to become a TRWC Member and to comply with and be subject to the obligations of Members as set forth in the Governance Agreement, including the obligation to contribute to the cost of the Network. This Agreement shall not relieve any Party of any obligation or responsibility imposed upon it by law.

6. Voluntary Termination or Withdrawal as Members. Any Party may voluntarily terminate its participation in the TRWC by providing twenty-four (24) months' prior written notice to the other Parties and complies with the requirements of Section 10.5 and any other provision of the Governance Agreement that addresses voluntary termination or withdrawal from the TRWC.

7. Additional Parties. Other cities, towns, counties, and Indian communities and other public agencies, as that term is defined by A.R.S. § 11-951, shall become additional parties to this Agreement and shall be bound by the terms of this Agreement at such times as those public agencies are admitted as TRWC Members.

8. Failure to Pay Financial Obligation.

8.1. If a Party is relieved from payment of its financial obligation to the TRWC as a matter of law, then the TRWC may suspend the Party's right to vote and participate in the affairs of the TRWC until such time as the Party has paid the difference between the Party's share of the costs and the amount the Party has paid for such costs. All other obligations of the Party shall remain in effect, except for obligations specifically excused as a matter of law.

8.2. Except as provided in paragraph 8.1, if a Party fails to pay a financial obligation within thirty (30) days of the invoice date and then, upon notice by the Administrative Manager of the deficiency, fails to cure the non-payment within thirty (30) days of the date of the deficiency notice, the TRWC shall suspend the Party's right to vote and participate in the affairs of the TRWC until such time as the Party has paid the difference between the Party's share of the costs and the amount the Party has paid for the costs. All other obligations of the Party shall remain in effect, except for obligations specifically excused as a matter of law.

9. Open Meeting Law. The TRWC, including the Board of Directors, shall comply with A.R.S. §§ 38-431, et seq. (Arizona Open Meeting Law) in conducting meetings to the extent the law is applicable.

10. Records; Confidentiality.

10.1. The TRWC shall comply with A.R.S. §§ 39-121 et seq. (Arizona Public Records Law) in maintaining and providing access to the records of the TRWC.

10.2. The TRWC shall make its financial records regarding the planning, designing, constructing, operating, maintaining and financing the Network available to any Party to this Agreement. Such request for inspection shall not be made more frequently than once a month.

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10.3. Each Party to this Agreement agrees to make available to the TRWC its financial records related to planning, designing, constructing, operating, maintaining and financing the Network. Such request for inspection shall not be made more frequently than once a month.

10.4. To the extent permitted by law, the Parties shall treat Network information as proprietary and confidential. Network information includes, but is not limited to, technical data, engineering details, construction documents, equipment lists, programming configurations, and operational procedures. Any Party who receives a request for information or a public records request concerning the Network shall promptly forward the request to the Administrative Manager for consideration and response.

11. Conflict of Interest. The Parties understand and acknowledge that this Agreement may be subject to cancellation under A.R.S. § 38-511 (Arizona's public employee conflict of interest law) in the event there is a conflict of interest of the type specified in A.R.S. § 38-511 by persons significantly involved in initiating, negotiating, securing, drafting or creating this Agreement.

12. Compliance with Applicable Laws. Each Party shall comply with all applicable laws, statutes, ordinances, executive orders, rules, regulations, standards, and codes of federal, state and other governments with jurisdiction over the Party whether or not specifically referred to in this Agreement.

13. Cooperation.

13.1. The Parties agree to make, sign and deliver all documents and to perform all acts that are necessary to fully carry out the terms of this Agreement. Each of the Parties shall fully cooperate with and assist one another in obtaining all licenses, permits, authorizations, approvals and consents required in the performance of this Agreement. Nothing in this Agreement shall be construed or interpreted to require the TRWC to be responsible for dispatching or otherwise causing its Members to respond to an event within another Member's jurisdiction.

13.2. In the event any legal proceeding is instituted challenging the authority and power of any of the Parties to execute this Agreement or to perform its terms and conditions, the Parties shall jointly and cooperatively defend the validity of this Agreement.

13.3. The Parties may elect and shall have the right to seek specific performance by any Party of any or all of the obligations set forth in this Agreement. The Parties agree that specific performance may be sought by way of special action filed in superior court seeking an injunction ordering the Party to perform its obligations under this Agreement. The Parties agree not to raise as a defense the position that there is an "adequate remedy at law." The Parties hereby stipulate and consent to the jurisdiction of the superior court in any such special action.

14. Amendment.

14.1. This Agreement may be amended only by a written document executed by a duly authorized representative of each of the Parties.

14.2. This Agreement and the Governance Agreement may be amended by one of the following two procedures:

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14.2.1. TRWC-Legislative Procedure. A proposed amendment to this Agreement including the Governance Agreement attached as Exhibit A shall be submitted for approval to the TRWC's Board of Directors. Upon approval of the Board of Directors in accordance with the voting process set forth in the Governance Agreement, each Party shall take appropriate steps in conformity with state and local law to authorize and approve the proposed amendment.

14.2.2. Formal Addendum Procedure. A proposed amendment to this Agreement or the Governance Agreement shall be presented to each Party in the form of an addendum, and, if approved by the Board of Directors in accordance with the voting process set forth in the Governance Agreement, each Party will take appropriate steps in conformity with state and local law to authorize and approve the amendment.

14.3. Each Party shall file a copy of the appropriate resolution, ordinance or other recorded action by which its legislative or governing body approved the amendment with the Executive Director of the TRWC.

15. Existing and Future Agreements.

15.1. The Parties agree that the provisions of this Agreement shall be incorporated in any future subcontracts between the Parties and any other person, political subdivision or public agency that contracts with the Parties to make use of the Network.

15.2. The Parties agree that they will not enter into subcontracts for the use of the Network without the prior approval of the Board of Directors, which shall have the authority to review the subcontracts for conformity with the rights and obligations set forth in this Agreement.

15.3. The Parties agree that this Agreement is a modification of all existing agreements between the Parties in regard to the Network. In the event of any conflict, inconsistency, or incongruity between the provisions of this Agreement and any of the provisions of any previous agreement between the Parties, the provisions of this Agreement shall in all respects govern and control.

15.4. Nothing in this Agreement shall be construed or interpreted:

15.4.1. To supersede prior existing mutual aid agreements or radio support agreements between or among the Parties.

15.4.2. To prohibit a Party from entering into separate agreements after the Effective Date of this Agreement concerning real estate, buildings and structures, and towers that the Party owns, leases, or licenses and that the Party authorizes and allows the TRWC to use as part of the Network, provided the separate agreements are consistent with this Agreement and compatible with the TRWC's use of the property for the Network.

15.4.3. To supersede prior existing agreements concerning real estate, buildings and structures, and towers that the Party owns, leases, or licenses and that the Party authorizes and allows the TRWC to use as part of the Network.

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15.5. This Agreement is entered into for the sole and exclusive benefit of the Parties, and no other person shall claim any implied right, benefit or interest in this Agreement. The Parties do not intend to create rights in or remedies to any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established under this Agreement.

16. Notices.

16.1. Any notice, consent or other communications ("Notice") required or permitted under this Agreement shall be in writing and either delivered in person, or, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed with confirmed receipt to the addresses of each Member that are on file with the Executive Director.

16.2. If mailed as provided in Section 16.1 of this Agreement, notice shall be deemed received five (5) days after the Notice is deposited in the U.S. mail as provided above. If delivered as provided in Section 16.1 of this Agreement, Notices shall be deemed received at the time it is personally served, on the day received as confirmed by any commercial air courier or express services. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. A Party may change its mailing address or the person to receive Notice by notifying the Executive Director and the other parties as provided in this paragraph.

17. Default and Cure; Alternative Dispute Resolution.

17.1. Each Party agrees that it will perform all duties and obligations agreed to be performed by it under the terms and conditions of this Agreement, and that the unexcused failure of the Party to perform its duties and obligations shall constitute a default under this Agreement. In the event of a default by a Party, the Executive Director shall give written notice of the default, specifying the existence and the nature of the default. The defaulting Party shall have thirty (30) days to remedy the default by rendering the necessary performance. In the event that the defaulting Party disputes an asserted default, the Party shall perform the disputed obligation, but may do so under protest. The protest shall be in writing, and shall precede the performance of the disputed obligation, and shall specify the reasons upon which the protest is based. After performance of the disputed obligation under protest, the Party disputing the asserted default shall have the right to submit the dispute to the TRWC's Board of Directors for a recommendation on a non-binding resolution under paragraph 17.3.

17.2. Notwithstanding the provisions of paragraph 17.1, in the event a Member disputes an amount billed, it shall do so in writing to the Executive Director within six (6) months after the invoice date or within sixty (60) days of the end of the fiscal year in which the invoice was issued, whichever is earlier. The Member shall pay the disputed amount, but may do so under protest. The protest shall be in writing, and shall accompany the disputed payment if not previously paid and shall specify the reason upon which the protest is based. After the protest has been filed and the disputed amount has been paid, the dispute shall be handled in accordance with the dispute resolution process specified in paragraph 17.3. Payments not made under protest shall be deemed to be correct. If a protest is not filed within the earlier of six (6) months after the invoice date or within sixty (60) days of the end of the fiscal year in which the invoice was issued, the Member waives its right to file a protest.

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17.3. If any dispute, complaint or controversy, including a protest made pursuant to paragraph 17.1 or 17.2, ("dispute") arises between or among the Parties under this Agreement, the Parties agree that the dispute shall be brought to the TRWC's Board of Directors for non-binding dispute resolution. The Board of Directors may establish appropriate and prompt procedures to govern the processing of complaints and the internal dispute resolution process. If a Party disagrees with the Board of Directors' determination, the Party may pursue the remedies otherwise provided for in this Agreement or provided at law.

17.4. The Parties agree that notwithstanding the existence of a dispute between or among the Parties, insofar as is possible under the terms of this Agreement, each Party shall continue to perform the obligations that are required of it and that are not related to the dispute. The Parties agree that at any point in the internal dispute resolution process, the Board of Directors may adopt and impose an interim emergency remedy to ensure the continuation of essential communication services until the dispute is resolved.

17.5. This Agreement shall not be construed or interpreted to prohibit a Party from seeking injunctive relief for the preservation of property.

17.6. In the event a dispute is not resolved pursuant to paragraph 17.3, the Parties agree to use arbitration to the extent required under A.R.S. § 12-133 and A.R.S. § 12-1518.

18. **Waiver.** The waiver by any Party of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition of this Agreement.

19. Performance and Uncontrollable Events.

19.1. All terms and conditions that are to be performed by the Parties or any of the Parties shall be performed at the sole expense of the Party so obligated, and if any other Party pays any sum of money or does any act that requires the payment of money by reason of the failure, neglect or refusal of the obligated Party to perform such term or condition, the sum of money paid by the other Party shall immediately be payable to the other Party by the Party obligated to perform.

19.2. No Party shall be considered to be in default in the performance of any obligations under this Agreement (other than obligations of a Party to pay costs and expenses) if failure of performance is due to an uncontrollable event. The term "uncontrollable event" means any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, fire, epidemic, war, riot, civil disturbance or disobedience, labor dispute, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage and restraint by court order or public authority, that by exercise of due diligence and foresight the Party reasonably could not have been expected to avoid and that by exercise of due diligence it will be unable to overcome. A Party that is rendered unable to fulfill any obligation by reason of an uncontrollable event shall exercise due diligence to remove such inability with all reasonable dispatch.

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19.3. If any Party claims that its failure to perform was due to an uncontrollable event, the Party shall bear the burden of proof that such activity was within the meaning and intent of this section, if such claim is disputed by any Party to this Agreement.

20. Assignment and Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns; provided, however, that nothing shall relieve any Party of any obligation under this Agreement, except upon the express written consent of the other Parties.

21. Entire Agreement. This Agreement, including the Governance Agreement, contains the entire agreement and understanding among the parties regarding the formation, governance and operations of the TRWC, and supersedes and replaces all related prior negotiations, agreements and proposed agreements, written or oral. Each Party acknowledges that no other Party, nor any agent or attorney of any Party, has made any promise, representation, or warranty whatsoever, expressed or implied, not contained in this Agreement and acknowledges that this Agreement has not been executed in reliance on any promise, representation or warranty not contained in this Agreement. This Agreement shall not be amended, modified or supplemented at any time unless in writing.

22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts executed and intended to be performed entirely within the State of Arizona by residents of the State of Arizona. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of Maricopa County, Arizona.

23. Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, the provision shall be severed from this Agreement, which shall otherwise remain in full force and effect if the remaining provisions permit the Parties to obtain the practical benefits of the Network. If any law or court of competent jurisdiction prohibits or excuses any Party from undertaking any contractual commitment to perform any act under this Agreement, this Agreement shall remain in full force and effect, but the provisions requiring such action shall be deemed to permit the Party to take such action at its discretion, if such a construction is permitted by law. This section shall not limit the discretion of the Parties to suspend a Party's right to vote and participate in the affairs of the TRWC as provided in Section 8, entitled Failure To Pay Financial Obligation.

24. Headings. Section headings are inserted in this Agreement solely for convenience and the section headings shall not by themselves alter, modify, limit, expand or otherwise affect the meaning of any provision of this Agreement.

25. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signatures on following pages]

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by
their duly authorized officers.

TOWN OF GILBERT

Date: _____

By _____
Town Manager

Printed Name

ATTEST:

Town Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the Town of Gilbert

Town Attorney

Printed Name

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PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE TOPAZ REGIONAL WIRELESS COOPERATIVE NETWORK**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by
their duly authorized officers.

CITY OF MESA

Date: _____

By _____
City Manager

Printed Name

ATTEST:

City Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the City of Mesa

City Attorney

Printed Name

**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE TOPAZ REGIONAL WIRELESS COOPERATIVE NETWORK**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by
their duly authorized officers.

TOWN OF QUEEN CREEK

Date: _____

By _____
Town Manager

Printed Name

ATTEST:

Town Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the Town of Queen Creek

Town Attorney

Printed Name

**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE TOPAZ REGIONAL WIRELESS COOPERATIVE NETWORK**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by
their duly authorized officers.

APACHE JUNCTION FIRE DISTRICT

Date: _____

By _____
Board Chair

Printed Name

ATTEST:

Board Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the County of _____

Attorney for the Board

Printed Name

**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE TOPAZ REGIONAL WIRELESS COOPERATIVE NETWORK**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by
their duly authorized officers.

CITY OF APACHE JUNCTION

Date: _____

By _____
City Manager

Printed Name

ATTEST:

City Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the City of Apache Junction

City Attorney

Printed Name

**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE TOPAZ REGIONAL WIRELESS COOPERATIVE NETWORK**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by
their duly authorized officers.

RIO VERDE FIRE DISTRICT

Date: _____

By _____

Its: _____

Printed Name

ATTEST:

Board of Directors, Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the County of Maricopa

County Attorney

Printed Name

EXHIBIT A

Governance Agreement

GOVERNANCE AGREEMENT

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1. RECITALS

This Governance Agreement ("Agreement") supercedes and replaces in its entirety the Governance Agreement dated April 8, 2008 and attached as Exhibit A to the Intergovernmental Agreement to Plan, Construct, Operate, Maintain and Finance the Topaz Regional Wireless Cooperative Network Contract Number 2008-3002-0359 and dated August 7, 2008 by and between City of Mesa, the City of Apache Junction, Apache Junction Fire District, the Town of Gilbert and the Town of Queen Creek. This Agreement has been approved and adopted by all Members. This Agreement shall be subject to amendment as provided in this Agreement and shall be valid for the duration of the TRWC's existence. This Agreement shall be binding upon all Members.

2. DEFINITIONS

Term	Definition
Account	"Account" shall mean a Local Government Investment Pool ("LGIP") or other account established for the purpose of paying, reserving money for or depositing funds for TRWC Network fees, Area fees, capital improvement fees, special assessment fees, grants or any other fees as determined and approved by the Board of Directors.
Administrative Manager	Administrative Manager "Administrative Manager" shall mean the City of Mesa or any subsequent Administrative Manager(s) and shall be responsible for the day-to-day operations and financial management of the TWRC.
Alternate Representative	"Alternative Representative" shall mean one or more persons that have been designated by a Member to serve as an alternate for a Member's Representative and have the authority specified in this Agreement.
Area	"Area" shall mean a subsection of the Network approved by the Board of Directors that is managed by an Area Manager.
Area Manager	"Area Manager" shall mean the City of Mesa and any other Member that subsequently becomes an Area Manager pursuant to Subsection 4.1.3.
Associate	"Associate" shall have the meaning set forth in Subsection 4.1.4.
Board of Directors	"Board of Directors" shall have the meaning set forth in Section 4.3.
Conditional Participant	"Conditional Participant" shall have the meaning set forth in Subsection 4.1.6.
Executive Director	"Executive Director" shall have the meaning set forth in Subsection 4.3.7.
Fiscal Year	"Fiscal Year" shall mean the accounting period in which all financial transactions will occur. The fiscal year for the TRWC will commence on the first day of July and end on the thirtieth day of June unless otherwise agreed to by the Board of Directors.
Impact Assessment	"Impact Assessment" shall mean an assessment used to identify

	capital expenses needed to modify the Network.
Interoperability	"Interoperability" shall have the meaning provided by the Public Safety Wireless Advisory Committee in a 1996 report to the Federal Communication Commission ("FCC") and National Telecommunications and Information Administration ("NTIA") and shall mean "an essential communication link within Public Safety and Public Service wireless communications systems which permits units from two or more different agencies to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results.
Interoperability Participant	"Interoperability Participant" shall mean an entity that is not a Member authorized by the Board of Directors to use the Network for the purpose of participating in on-going interoperable situations or circumstances.
LGIP Account	"Local Government Investment Pool Account" shall mean an account set up through the State Treasurer's Office.
Member	"Member" shall mean any entity that executes and becomes a party to the Amended and Restated Intergovernmental Agreement to Plan, Design, Construct, Operate, Maintain and Finance the Topaz Regional Wireless Cooperative Network with an Effective Date of May 1, 2012 as more specifically described in Subsection 4.1.1.
Network	"Network" shall mean the public safety/municipal communications system that includes, but is not limited to, the 700/800 MHz system originally built by TOPAZ.
NIMS	"NIMS" shall mean the National Incident Management System.
Numerical Vote	"Numerical Vote" shall have the meaning set forth in Subsection 4.3.6.2.
Party/Parties	"Party" shall mean any Member or subsequent Member; and "Parties" means all Members.
Representative	"Representative" shall mean the person designated by a Member to act on behalf of the Member on all matters concerning the TRWC.
Subscriber Unit	"Subscriber Unit" shall mean a voice and/or data unit (operating portable, mobile, and control station).
Talkgroup	"Talkgroup" shall mean a defined organizational grouping of radio users that need to communicate together.
TOPAZ	"TOPAZ" shall mean Trunked Open Arizona Network – 700/800 MHz Network procured and built by the City of Mesa.
TRWC	"TRWC" shall mean the TOPAZ Regional Wireless Cooperative Network.
Weighted Votes	"Weighted Vote(s)" shall have the meaning set forth in Subsection 4.3.6.3.

3. PURPOSE AND INTENT OF AGREEMENT

3.1. Purpose of the Agreement

The TRWC is formed for the purpose of improving communications and operations among participating public safety and service entities. This Agreement establishes an organizational and management structure for ongoing Network administration, operation, and maintenance; and establishes a budget proposal process, an accounting process, and the allocation of costs associated with the Network's operations, maintenance, and enhancement for Members.

The Members further desire throughout this Agreement to provide a process for admitting other public safety and public service agencies to join and participate in the TRWC according to the rules set forth in this Agreement.

The TRWC assumes no responsibility for events occurring within a Member's jurisdiction; rather each Member agrees that it is responsible for responding to events within its jurisdiction.

The TRWC Board of Directors shall govern the TRWC's continued development and operations.

3.2. Confidentiality and Sharing of Information

Network information shall be treated as proprietary and confidential because such confidentiality is essential for public safety. This Network information includes, but is not limited to, technical data, engineering details, construction documents, equipment lists, programming configurations, and operational procedures.

Any request for information shall be forwarded to the TRWC Executive Director for consideration.

4. TRWC STRUCTURE

The TRWC structure for Network use, operation, maintenance, replacement and enhancement is as follows:

4.1 Network Members

The following subsections describe the various categories of Membership or other participation.

4.1.1. Members

The TRWC Members will consist of the entities that execute and become a party to the Amended and Restated Intergovernmental Agreement to Plan, Design, Construct, Operate, Maintain and Finance the Topaz Regional Wireless Cooperative Network with an Effective Date of May 12, 2012 and any other entity that is admitted in accordance with Section 4.2 of this Agreement.

Entity means any city, town, county, state, Indian nation, fire district or other separately constituted public entity.

4.1.2. Administrative Manager

As the Administrative Manager, Mesa shall have the following powers and duties:

- 4.1.2.1.** Appoint an Executive Director, subject to the approval of the Board of Directors.
- 4.1.2.2.** Establish and maintain an accounting and budget system.
- 4.1.2.3.** Collect and disburse funds.
- 4.1.2.4.** Procure general goods and services and professional services for the TRWC.
- 4.1.2.5.** Contract with other federal, state, and local agencies as required to carry out the purposes of the TRWC.
- 4.1.2.6.** Serve as a TRWC contracting authority.
- 4.1.2.7.** Subject to Board of Directors approval, apply for and, if awarded, accept TRWC grants and donations.
- 4.1.2.8.** Provide reports as required by the Board of Directors.
- 4.1.2.9.** Perform the functions set forth in Subsection 6.4.5.
- 4.1.2.10.** Perform all other duties as assigned by the Board of Directors.

The TRWC Membership will reimburse the Administrative Manager for all costs incurred for performing Administrative Manager responsibilities.

4.1.3. Area Manager(s)

The Area Manager(s) is responsible for the day-to-day operations and maintenance of a specified portion of the TRWC as determined by the Board of Directors.

The TRWC may designate additional Area Managers as the Network architecture changes to include specialized components or regional Areas or sub-systems.

The Area Managers shall have the following powers and duties within their designated areas:

- 4.1.3.1.** Manage and allocate Subscriber Unit identifications and priorities.

- 4.1.3.2.** Manage and allocate Talkgroup identifications and priorities.
- 4.1.3.3.** Collect and report TRWC utilization statistical data.
- 4.1.3.4.** Maintain, optimize, and backup TRWC databases.
- 4.1.3.5.** Operate, inspect and maintain the Network infrastructure.
- 4.1.3.6.** Identify, track, and resolve TRWC problems.
- 4.1.3.7.** Establish and maintain a disaster recovery plan.
- 4.1.3.8.** In conjunction with the Administrative Manager and the Executive Director, participate in planning activities, including administrative organizational structure and staffing, Network expansions and enhancements, budget and expenditures, and risk management.
- 4.1.3.9.** Implement the Board of Directors' policies and procedures.
- 4.1.3.10.** Inform the Executive Director of TRWC issues.
- 4.1.3.11.** Perform the functions set forth in Subsection 6.4.5.
- 4.1.3.12.** Perform all other duties as assigned by the Board of Directors.

4.1.4. Associates

A non-governmental entity may become a TRWC Associate if (1) (a) it contracts with the Administrative Manager to use the Network, subject to Board of Directors' approval, (b) it is under contract to a Member for providing public safety or public services and authorized to use the Network to support contracted activities, or (c) is periodically using the Network to support public safety services with an existing Member; and (2) compliant with the conditions as set forth by the Board of Directors. Associates have no TRWC voting rights or representation on the Board of Directors. The Associate's representative should provide the Executive Director with all appropriate contact information for all notifications. The Administrative Manager subject to the Board of Directors' approval may, but is not required to, assess fees and costs including "in kind" compensation against an Associate in an amount determined by the Board of Directors.

4.1.5. Interoperability Participants

An Interoperability Participant may use the Network to support existing Members with intermittent interoperable situations or circumstances of use if authorized and subject to the conditions established by the Board of Directors. To support interoperability the TRWC shall follow the NIMS protocols for interoperable communications. Interoperability Participants have no TRWC voting rights or representation on the Board of Directors. The Interoperability Participant's representative should provide the Executive Director with all appropriate contact

information for all notifications. The Administrative Manager subject to the Board of Directors' approval may, but is not required to, assess fees and costs including "in kind" compensation against an Interoperability Participant in an amount determined by the Board of Directors.

4.1.6. Conditional Participants

A non-Member entity may temporarily use the Network for special events, tactical situations or emergency circumstances to support an existing Member(s), but only if authorized by the Board of Directors or the Executive Director. Conditional Participants have no TRWC voting rights or representation on the Board of Directors. Unless directed by the Board of Directors as a condition to use the Network, no fees and costs will be assessed to the Conditional Participants because their use of the Network is on a short, temporary basis to support existing Members. The Conditional Participants shall provide the Executive Director with the name of a designated representative and all appropriate contact information for all notifications.

4.2. Member Admission

4.2.1. General Requirements

Any governmental entity may apply for TRWC Membership. Subject to the Board of Directors' approval, such applicants shall be admitted as a Member and such membership shall become effective immediately after the following have occurred:

- Such applicant has fulfilled the requirements of Subsections 4.2.2., 4.2.3. and 4.2.4. below;
- Such applicant has entered into an agreement with the TRWC that specifies the fee or charges that such applicant shall pay to the TRWC pursuant to Section 5 below, including the costs associated with the process and the cost to cover such applicant's capacity and coverage needs; and
- Such applicant has executed and become a party to this Agreement.

4.2.2. Application

Any governmental entity may apply for Membership by submitting a written request for consideration to the TRWC Executive Director.

4.2.3. Evaluation Factors

The TRWC will evaluate requests for new membership using the following factors:

- Impact on Network Radio Frequency ("RF") coverage;
- Impact on the Network Grade of Service ("GOS");
- Interoperability requirements (i.e. extent of wide area roaming for both the existing and new members);

- Need for additional infrastructure;
- Regulatory constraints;
- Applicant's infrastructure;
- Applicant's user needs assessment;
- Backhaul availability;
- Cost impacts;
- Impact on current operations;
- Roaming impact on existing Members;
- Benefits to the TRWC to admit the applicant; and
- Additional factors as determined by the TRWC.

4.2.4. Admission Process

The Board of Directors has the sole and absolute discretion to either summarily deny or consider applicants for Membership status. If the Board of Directors elects to consider the application, the TRWC will conduct an analysis to determine costs, risks and benefits to the TRWC. The applicant shall pay the costs of such analysis prior to consideration.

After completion of the analysis statement, the Executive Director will develop a recommendation, complete with a financial impact and Network operational impact statement for the Board of Directors' consideration. If the Board of Directors decides to consider a Membership application, the Board of Directors will vote on such membership. The Board of Directors shall have the sole and absolute discretion to accept or deny applicants for membership. The Board of Directors shall establish the initial cost to join the Network.

4.3. TRWC Board of Directors and Executive Director

The TRWC structure shall consist of a Board of Directors, and an Executive Director, with the duties as discussed below. An organizational chart of the TRWC structure is shown in Appendix A.

4.3.1. Composition and General Duties

The Board of Directors shall consist of City Managers, County Managers, State of Arizona Department Directors, Regional Agency Directors or others with equivalent authority who are Members in good standing with the TRWC. The Board of Directors shall set TRWC policy, develop and maintain a long-range capital budget, develop and adopt an annual budget, and assess the fees listed in Section 5. The Board of Directors may exercise such other powers and duties as authorized under this Agreement. Each Member shall be entitled to have one Representative on the Board of Directors. Each Member shall be bound by the acts of its Representative, and the TRWC may rely on the act of a Representative the same as if such act

were done by the Member. The Representative or Alternate Representative must be vested with the authority to lawfully act on the Member's behalf with respect to the TRWC.

4.3.2. Chairperson

Notwithstanding Subsection 4.3.6.1 to the contrary, a Chairperson shall be elected by the Board of Directors by simple un-weighted majority vote at the first meeting and serve for a two (2) year term, except the initial term of the inaugural Chairperson shall be three (3) years. The Chairperson shall be responsible for scheduling Board of Directors meetings, providing agendas and meeting minutes for each meeting, presiding over the meetings and attesting to the accuracy of the meeting minutes.

4.3.3. Vice-Chairperson

Notwithstanding Subsection 4.3.6.1 to the contrary, a Vice-Chairperson shall be elected by the Board of Directors by simple un-weighted majority vote at the first meeting and serve for a two (2) year term. The Vice-Chairperson shall execute the duties of the Chairperson when the Chairperson is absent from meetings or not available.

4.3.4. Board of Directors Meetings

The Board of Directors will schedule and conduct regularly scheduled or specially called TRWC Board of Directors meetings, pursuant to Subsections 4.3.4.1 through 4.3.4.6 below. Proper notice and agendas must be provided to the Board of Directors' members in advance of any Board of Directors meeting.

4.3.4.1. Regular Meetings

The Board of Directors' regular meetings shall be held quarterly, except to the extent that and for such periods of time as the Board of Directors shall determine that regular meetings should be held more or less frequently.

4.3.4.2. Special Meetings

Board of Directors' special meetings may be called by two or more members with the approval of the Chairperson upon a minimum of three (3) working days notice to the other members. In the event of an emergency, a meeting may be scheduled and noticed with less than three (3) working days notice, provided that a Quorum as defined below is present at such meeting.

4.3.4.3. Executive Sessions

Executive sessions may be called as needed by the Board of Directors as permitted under Arizona law.

4.3.4.4. Notice and Agenda

The Executive Director shall prepare the notice of meeting and the initial agenda for each regular or special meeting and shall provide the notice and initial agenda to each Board of Directors' member. Each Board of Directors' member shall be entitled to add agenda items by notifying the Chairperson and the Executive Director.

4.3.4.5. Quorum

A quorum shall be required to conduct business. To constitute a quorum, there shall be at least three Board of Directors' members present and the Weighted Votes in good standing with the TRWC represented constitute an eighty percent (80%) majority of the Weighted Votes.

4.3.4.6. Attendance

Subject to approval by the Board of Directors, a Member may attend and participate in a meeting by telephone, videoconference, or written proxy and such attendance and participation shall have the same effect as if the Member were present in person.

4.3.5. Board of Directors Representation

Each Member is entitled to appoint one person to serve as that Member's Representative and shall notify the TRWC in writing of such Member's Representative. The Member's Representative appointment is effective when the TRWC receives such written notice. Each Member shall be bound by the acts of its Representative, and the TRWC may rely on the act of a Representative the same as if such acts were done by the Member. The Representative or Alternate Representative must be vested with the authority to lawfully act on the Member's behalf with respect to the TRWC.

4.3.5.1. Appointment of Alternate Representatives

Each Member shall appoint one (1) or more designated persons as that Member's Alternate Representative who may act when that Member is not available. Each Member shall be bound by the acts of its Representative, and the TRWC may rely on the act of a Representative the same as if such act were done by the Member. The Representative or Alternate Representative must be vested with the authority to lawfully act on the Member's behalf with respect to the TRWC. The names and addresses of all Board of Directors' members, Representatives and Alternate Representatives shall be maintained by the Executive Director.

4.3.5.2. Removal and Replacement

A Member may remove or replace its Representative and/or Alternate Representative(s) at any time by giving written notice, including effective resignation date to the TRWC Executive Director.

4.3.6. Board of Directors Voting

4.3.6.1. Voting Calculation

It is contemplated that all Members will strive to promote cooperation and the welfare of the TRWC by consensus decision-making. Each Member attending a meeting of the Board of Directors is required to vote on all legal matters to be decided by the Board of Directors at that meeting. A failure to vote or a voluntary abstention shall be counted as an affirmative vote unless excused by applicable federal or state conflict of interest laws. Only Members in good standing are allowed to vote.

The voting rights of a Member shall be suspended for non-payment of the Member's financial obligations to the TRWC. A Member is not in good standing if it has not timely paid its TRWC financial obligations.

4.3.6.2. Numerical Voting

All matters shall be decided by a Numerical Vote, provided that any Member may call for a Weighted Vote at any time before or after the Numerical Vote if the call for the Weighted Vote is made before adjournment of the meeting at which the Numerical Vote is taken. A Numerical Vote shall pass by the affirmative vote of a majority of the Members of the Board of Directors present and voting. In case of a tie in votes on any motion, the motion shall be considered lost. If a Weighted Vote is taken, the Numerical Vote shall have no effect unless it is in accord with the Weighted Vote.

4.3.6.3. Weighted Voting

Each Member of the Board of Directors shall have the number of Weighted Votes that are calculated in accordance with the following formula: $\text{Weighted Votes} = 100 \times (\text{Total of Member's Subscriber Units} / \text{Total Network Subscriber Units})$ provided, however, Mesa's percentage of Weighted Votes shall not fall below twenty-one percent (21%). If Mesa's percentage of Weighted Votes falls below twenty-one percent (21%) then the Weighted Vote of Mesa automatically shall be increased to twenty-one percent (21%). In such case, the Weighted Votes of all the other Members shall be adjusted proportionately so that the sum of the Weighted Voting percentage of all Members equals one

hundred percent (100%). The number of Weighted Votes of each Member shall be recalculated at the beginning of each quarter or whenever a new Member joins the TRWC.

A Weighted Vote shall pass by both the affirmative vote of a majority of the Members of the Board of Directors present and the affirmative vote of Members representing eighty percent (80%) of the Weighted Votes of all Members in good standing. If the Weighted Vote does not pass, the original Numerical Vote has no effect. A Weighted Vote shall be taken on a roll call basis.

4.3.6.4. Voting Topics

Topics that require voting include (1) the approval for expenditures not identified in the TRWC annual budget; (2) annual budgets and fee allocations (both capital and O&M); (3) membership; (4) policies; (5) strategic plans; (6) disaster recovery plans; (7) participating in or accepting grants; and (8) resolving disputes.

4.3.7. Executive Director

The Administrative Manager shall appoint an Executive Director, subject to the Board of Directors' approval, to control and coordinate TRWC administrative activities that are assigned to the Executive Director by the Board of Directors. The Executive Director will report to the Board of Directors. Duties of the Executive Director include:

- Communicating issues to the Members as appropriate to support the mission of the TRWC.
- In conjunction with the Administrative Manager and affected Area Manager(s), managing overall planning activities, including administrative organizational structure and staffing, Network expansions and enhancements, budget and expenditures, and risk management.
- Preparing an annual budget, including fees recommended for approval by the Board of Directors.
- Providing billing and cost recovery services following standard accounting practices.
- Creating an annual update of the five (5) year plan for approval by the Board of Directors.
- Preparing meeting notices, agendas and maintaining meeting minutes for the Board of Directors.
- Coordinating efforts of the TRWC.
- Oversight of the conflict resolution process.

- Keep or cause to be kept the current version of this Agreement and all other records of each TRWC transaction and shall maintain such records at the TRWC principal office. Said records shall be open for inspection and examination by all Members or their duly authorized representative at all reasonable times.
- Maintenance of Operating Procedures as directed by the Board of Directors.
- Keep or cause to be kept appropriate documentation of all bills of sale, licenses, leases, titles, warranties and operating manuals as approved by the Board of Directors.
- Providing quarterly budget and expense reports that follow standard accounting practices.
- Providing quarterly Network performance reports.
- Maintenance of an inventory of all Network infrastructure and real property used on behalf of the TRWC.
- Maintaining a current record of all contact information for all Members' Representatives and Alternate Representatives.
- Performing other duties as directed by the Board of Directors.

5. ACCOUNTING, BILLINGS, PAYMENTS, OWNERSHIP

The Members shall maintain sufficient balances in their respective Accounts as required by the Administrative Manager. Accounts shall be established for Network fees, Area fees, capital improvement fees, special assessments, grants or any other purpose as determined and approved by the Board of Directors.

At least once every five (5) years, the Board of Directors shall review/revise the Network service Areas that shall be used to estimate and assess the operations and maintenance, and capital fees of the Network. The Areas may represent (1) regional geographic areas that experience similar operations and maintenance and capital costs or (2) unique functional requirements.

The Administrative Manager shall pay all administrative, operating and maintenance, capital, special assessments, and grants specific costs that are incurred for the benefit of the TRWC as a whole and shall draw from each Area Manager's (or Members') respective Account that member's share of the actual costs based on a defined basis as determined by the Board of Directors.

If an Area Manager with the approval of the Board of Directors, adds a member to their Area, that Area Manager is responsible for all costs in their Area and billing to the member added to their Area.

5.1. Budget and Expenditure Planning

5.1.1. The Executive Director shall prepare a preliminary budget for the subsequent fiscal year by February 1 of each year. The preliminary budget shall include all administrative costs, operation and maintenance costs, and planned capital costs. As a part of the preliminary budget, a five fiscal year financial model shall be prepared. The financial model shall include projected: revenue forecast and requirements, administrative costs, operation and maintenance costs and planned capital costs. All significant issues and financial assumptions influencing the budget and model shall be detailed and included as a part of the presentation. The proposed budget, financial model and the presentation of significant issues and financial assumptions shall be forwarded to the Board of Directors for consideration.

The Board of Directors shall adopt each subsequent fiscal year's final administrative, operation and maintenance, and capital budget by April 1 of each year. A copy of the adopted budget shall be provided to all Area Managers.

5.1.2. If, at any time during the current fiscal year, the Executive Director has reason to believe that the final estimate of the cost of operating and maintaining the Network approved by the Board of Directors and used to calculate quarterly, (or other period approved by the Board of Directors) fees for a given operations and maintenance Area exceeds ten percent (10%) of the total, the Executive Director may present a new estimate of the cost of operating and maintaining the Network for that Area to the Board of Directors for approval. If the Board of Directors approves the new estimate, it shall be used to recalculate the remaining quarterly, (or other period approved by the Board of Directors) fees due in that fiscal year in that Area.

5.2. Network Fees

5.2.1. The Executive Director shall estimate the annual Network costs to include administration, and operation and maintenance for the Network at large ("Network Costs") for each upcoming fiscal year. By no later than February 1, the Executive Director shall present an estimate of the costs to the Board of Directors. The Board of Directors shall approve a final estimate of the cost by April 1, of the year before the fiscal year in question.

5.2.2. The Board of Directors shall assess the Network fees on a quarterly basis provided that the Board of Directors may adjust the frequency of the assessed fees. The Network fees shall be paid monthly into an appropriate Account by each Area Manager (or Member) on a basis as determined by the Board of Directors.

5.2.3. Each Area Manager (or Member) shall deposit the Network fees into an Account that shall only be used for TRWC purposes. The Administrative Manager shall draw down the actual cost monthly and provide an actual costs report to each Area Manager or Member. The Administrative Manager may change the method of payment for Network Fees subject to Board of Directors' approval.

5.3. Area Fees

5.3.1. Each Area Manager shall estimate the annual Area costs to include administration, and operation and maintenance for the Area ("Area Costs") for each upcoming fiscal year. By no later than February 1, each Area Manager shall present an estimate of the costs to the Board of Directors. The Board of Directors shall approve a final estimate of the cost by April 1, of the year before the fiscal year in question.

5.3.2. Subject to Board of Directors' approval, each Area Manager shall assess the Area fees on a quarterly basis, however, the Area Managers may adjust the frequency of the assessed fees. The Area fees shall be paid monthly by each Area's Members, on a basis as determined by the Area Manager subject to the Board of Directors' approval. The Area fees shall be calculated as determined by the Board of Directors.

5.3.3. Each Area Manager shall determine the method of payment for the Members within their area.

5.4. Subscriber Unit Maintenance and Programming

5.4.1. The cost of Subscriber Unit maintenance shall be borne by the owner of those Subscriber Units and not the TRWC.

5.4.2. All Network and Subscriber programming shall be done by entities authorized by the TRWC. The cost of such Subscriber programming and any other related costs shall be paid by the Members receiving the service. Any general Network programming cost shall be paid by the TRWC and billed to the Members based on an approved allocation method.

5.5. Capital Improvement Fees

5.5.1. The Executive Director shall estimate the cost of replacement of assets used by the Network (exclusive of real property and other items identified in subparagraph 5.10.1) and Network improvements for each upcoming fiscal year and future years. By no later than February 1, the Executive Director shall present an estimate of the costs to the Board of Directors. The Board of Directors shall approve a final estimate of the costs by April 1, of the year before the fiscal year in question.

5.5.2. The Board of Directors shall assess to the Members of each Area (or other period approved by the Board of Directors) a monthly fee that covers the total cost of replacement of assets used by the Network (exclusive of real property and other items identified in subparagraph 5.10.1) and Network improvements approved by the Board of Directors for the current fiscal year for the applicable Area. The fees shall be paid monthly into an appropriate Account by each Area Manager, calculated as determined by the Board of Directors.

5.5.3. Each Area Manager shall deposit the capital improvement and replacement fees, if any, collected into an appropriate Account that shall only be used for TRWC

Network capital improvement and replacement activities. The Administrative Manager shall draw down the actual costs monthly and provide an actual costs report to each Area Manager.

5.5.4. If a Member brings assets to the TRWC that provide significant benefit to the TRWC as a whole or in a particular Area, and the Board of Directors accepts these assets on behalf of the TRWC, the capital fee assessed to that Member shall be reduced commensurately with the value of the benefit as determined by the Board of Directors.

5.6. Special Assessments (including Disaster Recovery, Additional Subscriber Units and Talk Groups, Roaming and Other Special Assessments)

5.6.1. The Board of Directors may assess other fees on an as-needed basis to pay the costs of disaster recovery, payment for uninsured casualty losses, regulatory fines or insurance deductibles, the use of the Network by an Interoperability Participant, Conditional Participant, or Associate or to pay the costs of special projects that do not benefit all Members in a reasonably proportionate manner. Such fees may be assessed in any manner as approved by the Board of Directors and need not be equal among Members.

5.6.2. When an existing Member(s) wishes to add a number of subscriber units, talk groups, roaming profile or other capacity issues to the Network that are expected to impact Network performance for other Member(s), the TRWC shall assess a fee to the relevant Member(s) that covers the cost of a study that determines the full costs and full benefits of the additional subscriber units on other existing Member(s). The study shall consider the impacts on the existing Network and existing Member(s), including but not limited to, controllers, base stations, facility capacity, traffic capacity, roaming capacity, and microwave/fiber capacity.

5.6.3. The TRWC shall also assess a fee as approved by the Board of Directors to Member(s) that covers the costs necessary for the TRWC to provide initial service to the additional subscriber-units. If these costs include investment in infrastructure necessary to increase Network capacity, and the infrastructure that must be purchased for such capacity could ultimately be used to handle additional subscriber units beyond the amount requested by the Member(s), the TRWC or the Area Manager may enter into a capacity agreement that provides for reimbursement of a portion of these costs, if and when additional subscriber units are brought onto the Network.

5.6.4. The TRWC shall also assess a fee as approved by the Board of Directors to Member(s) that covers the costs imposed by the additional subscriber units, talk groups, roaming profile or other capacity issues on existing Member(s). Fees so collected must first be used by the TRWC to make the harmed existing Area Manager whole. The Member(s) are to receive the same services and benefits they receive from the TRWC before the additional subscriber units were put into service.

5.6.5. Special Assessments shall be deposited into an appropriate Account that shall only be used to pay the costs of the projects for which the assessment is imposed. The Executive Director may use this Account without prior Board of Directors' approval only in the

event of a major failure, disaster or force majeure event that necessitates immediate action to restore the Network to operating condition.

5.7. Grants

5.7.1. The Administrative Manager may proceed to obtain grant funding for the TRWC with the Board of Directors' approval. Any matching funds required by a grant towards a network wide project will be assessed to the Members based on an appropriate allocation method determined by the Board of Directors. The Administrative Manager will deposit Network related grant funds to the Member's Account or other appropriate account. If any matching is required related to the Network project, the Member(s) will deposit the appropriate funds to their respective Account or other appropriate account as directed by the Board of Directors in its sole and absolute discretion.

5.7.2. Member(s) may proceed individually to obtain grant funding for assessed TRWC System projects. Acceptance and use of these Grant funds is at the discretion and approval of the Board of Directors if the Members' grant request is tied to a TRWC System project. The Member that is awarded the grant remains responsible for meeting all of the terms, conditions and obligations of the grant.

5.8. Member Payments

5.8.1. Each Member shall pay the fees levied against it by the TRWC.

5.9. Billing, Records and Reports

5.9.1. Upon reasonable notice, TRWC non-privileged accounting records and reports are subject to Member review.

5.9.2. The Executive Director will prepare and deliver to the Board of Directors annual and quarterly reports. Special Reports will be prepared as requested by the Board of Directors.

5.10. Ownership

5.10.1. Ownership of Assets

Each Area Manager and Member shall continue to be responsible for all real estate and real property, including fixtures thereto, and personal property that the Area Manager and Member owns, leases, licenses or otherwise allows to be used by the Network. Real estate and real property, including fixtures thereto, and personal property shall not be transferred to the TRWC. This without limitation shall include:

- Real estate
- Buildings and structures

- Towers
- Network Hardware and Software
- Frequencies

Otherwise, subject to the Board of Directors' approval, Network hardware and software used to operate the Network may be owned by the TRWC.

Any Member(s) that brings in real estate, building and structures and towers must maintain the operational integrity and capacity necessary to operate the Network as defined in the applicant's user needs assessment.

5.10.2. Transfer or Assignment of Ownership of Assets

Notwithstanding anything to the contrary in this Agreement, all Network hardware and software purchased by the Area Manager or Members and used to operate the Network shall be owned by that Area Manager or Member unless replaced by the TRWC at TRWC's cost.

6. SERVICES

6.1. Use of the Network

When using the Network each Member, Associate, Interoperability Participant, and Conditional Participant shall abide by all policies, procedures and guidelines established by the TRWC.

6.2. Requests for Service

6.2.1. Routine or Normal

Routine services consist of Members using their day-to-day talkgroups in a manner that is consistent with normal operations. Initial Member talkgroups, feature sets, encryption usage, priorities and roaming allowances ("Member Capabilities") are established upon the time of becoming a Member. The Member capabilities may be subsequently changed pursuant to recommendations by the Executive Director and subject to approval by the Board of Directors.

6.2.2. Emergency or Tactical

On certain occasions there could be a need for emergency or tactical operations that may require TRWC Executive Director notification and/or authorization. This may include: changes in Member capabilities, requests for dynamic regrouping; console patching; or talkgroup merging. It could also entail the need for temporary Network authorization for non-Members. In most cases Member talkgroups and operational plans adequately provide for emergency and tactical scenarios without the need for TRWC Executive Director notification or authorization. Due to the nature of public safety emergencies, Members have the flexibility to act as necessary, as deemed by their respective dispatch and incident commanders in the time of emergency.

situations that fall outside of normal operations. Members shall promptly notify the TRWC's Executive Director of changes necessitated by the emergency.

6.3. Planning

Any Member desiring expanded services shall make these requests to the TRWC Executive Director. The TRWC Executive Director will work with the Area Manager and/or Member as necessary in evaluating and planning for the request. Examples include a request to add sites to the Network to increase a Member's in-building coverage or to implement a Network upgrade in order to receive a new feature. These types of requests require detailed assessment and planning due to their potential technical and cost impacts to all Members. The allocation of the costs for such detailed assessments and planning services will be reviewed by the Executive Director and subject to the approval of the Board of Directors.

6.3.1. Needs Assessment

It is anticipated that Members may request assistance with a needs assessment based on the current and ongoing communications needs and priorities. Depending on the nature of the required assessment, the Executive Director may designate a sub-group or hire third-party services to conduct the assessment subject to the Administrative Manager's approval. A fee may be required for this service.

6.4. Programming and Reprogramming

All Network subscribers must be programmed or re-programmed with a valid Network key. In order to maintain the highest level of Network security, all Network subscribers programming is performed by entities authorized by the TRWC. All subscribers to be programmed or reprogrammed must have valid programming templates that have been approved by the Administrative Manager.

6.4.1. Talkgroups

A talkgroup is a defined organizational grouping of radio users that need to communicate together. When two or more radio users select the same talkgroup on their radios, all radio users with that talkgroup selection hear the transmitted audio. A talkgroup plan is a summary of all defined radio talkgroups. This plan is then used to develop the radio template that is the programming data for the individual radios.

TRWC talkgroups are "owned" by the agency that uses a talkgroup for primary business operations. Authority to assign or release a talkgroup for use by other entities resides with the owner of the talkgroup.

A number of existing TRWC talkgroups are designated as interoperability talkgroups. Interoperability talkgroups are assigned a single agency owner by the Administrative Manager.

Each Member is responsible for the development of their talkgroup plans. Talkgroup plans are designed to support Member's public safety and public service operations and have a direct impact to the Network performance. Talkgroup plans are approved for use on the Network by the Administrative Manager.

6.4.2. Priorities

The Executive Director, subject to the Board of Directors' approval, shall establish priority levels for the individual talkgroups on the Network. In general, priorities are assigned highest to lowest for emergency calls, public safety, public service and general government users, respectively. Emergency calls are for when immediate assistance is needed and are initiated by activating the emergency button on the subscriber unit.

6.4.3. Use Area and Roaming

The TRWC Network is composed of multiple radio communications sites and is configured in a mix of simulcast cells and individual repeater (IR) sites. Site access restrictions and roaming restrictions will be imposed to manage traffic loading because the Network has limited capacity.

The Executive Director, subject to the Board of Directors' approval, shall grant talkgroup site and roaming authorization, as necessary, to support Member business operations.

6.4.4. Encryption

The Executive Director shall assess, evaluate and act upon requests from any Member or applicant desiring the use of the encryption and Over-The-Air-Re-keying (OTAR) capabilities of the Network.

The TRWC Network supports radio encryption and OTAR. The Mesa Police Department and any other authorized entity are responsible for the generation, distribution, storage, destruction and maintenance of their respective encryption materials. The Mesa Police Department and any authorized entity shall have established procedures, approved by the Board of Directors, for supporting their respective encryption operations on the TRWC Network.

6.4.5. Network Management

The Administrative Manager and Area Manager(s) are responsible for Network Management.

Network Management responsibilities include:

- Subscriber ID management and allocation.
- Subscriber priority management.
- Talkgroup ID management and allocation.
- Talkgroup priority management.

- Implementing established policies and procedures governing the operations of subscribers on the Network.
- Producing and collecting statistical data and reports for Member Network utilization.
- Database maintenance, optimization, and back-ups.
- Problem identification, tracking, escalation, and resolution.
- Notwithstanding anything to the contrary in this Subsection 6.4.5, the Administrative Manager shall be solely responsible, unless delegated by the Administrative Manager to an Area Manager, for system wide Network configuration and management.

6.5. Training

Each Member shall ensure that its users are properly trained prior to any use of the Network.

7. PERFORMANCE

The Network was designed and implemented following design and evaluation standards for public safety systems. During the technical analysis phase for adding new Members to the Network, the TRWC shall follow the TRWC design criteria and evaluation standards to protect both current and future Members.

7.1. Coverage

The initial RF coverage performance metrics are shown for the areas as depicted on the RF coverage maps with a 12dB margin for portable in-building coverage. The RF coverage maps are housed with the Administrative Manager for the coverage areas.

The TRWC shall maintain, or improve upon, RF coverage performance as the Network is upgraded and/or expanded, to ensure that the established minimum coverage standard is in place throughout the Network.

7.2. Capacity

Unless the Board of Directors agree otherwise, the Grade of Service (GOS) performance metric for public safety is defined as five percent (5%). This means that no more than five percent (5%) of transmissions would receive a system busy upon initial Push to Talk ("PTT") during the busy hour for the Network.

Member roaming allowances and interoperable talkgroup agreements will have an impact on the existing Network GOS. Without Network capacity increases, Members will not be allowed full Network roaming for day-to-day talkgroups, but, with permission from the TRWC, may have access to interoperable talkgroups that roam. The TRWC shall maintain, or improve upon, the GOS as the Network is upgraded and/or expanded to ensure that the established minimum Network capacity standard is in place.

7.3. Reliability and Availability

The TRWC intends to maintain the existing Network coverage and capacity requirements; however, there are no guarantees for Network reliability and availability for new Members when operating within the existing service territory. It is anticipated that there may be situations where certain constraints or permissions are recommended and deployed to assist with capacity control during the new Member evaluation process. These will be explored and discussed with each applicant on a case-by-case basis.

7.4. WARRANTY DISCLAIMER: ALL MEMBERS DISCLAIM ALL WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY, APPLICABLE OR RELATING TO THE EQUIPMENT, SUPPLIES, MAINTENANCE OF THE EQUIPMENT, OR OTHER OR ITEMS PROVIDED UNDER THE AGREEMENT BY ANY MEMBER(S), INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE MEMBERS ALSO HEREBY WAIVE ANY RIGHTS AND REMEDIES TO MAKE A CLAIM INCLUDING, WITHOUT LIMITATION, ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, FOR ANY REASON WHATSOEVER, BASED ON THE OPERATION AND MAINTENANCE OF THE NETWORK BY THE ADMINISTRATIVE MANAGER(S) AND/OR THE AREA MANAGER(S).

8. OPERATIONAL CONTROL AND DUTIES (PROGRAMMING AND CAPABILITIES)

8.1. Roles

The Network databases contain critical information and must be properly managed and archived. The Network databases contain information related to subscriber radios, radio users, talkgroups, fleet mapping, site preferences, roaming privileges, Network operational parameters, user accounts, passwords, and access privileges as described in Operational Policies and Procedures.

All Network Databases shall be programmed, maintained, and managed in a manner consistent with minimizing the degradation of operational performance and the loss or corruption of data. The Administrative Manager and Area Manager(s) are responsible for the programming, maintenance, and backup of the TRWC Network Databases.

8.2. Policies and Procedures

The Executive Director shall maintain, subject to Board of Directors' approval, the TRWC policies and procedures. At a minimum, the Executive Director shall review the TRWC policies and procedures bi-annually. Revisions to the policies and procedures shall be approved by the Board of Directors. The Executive Director may consider specific revisions upon request.

8.3. Control Center and Monitoring

The Administrative Manager and Area Manager(s) shall utilize the TRWC Network monitoring equipment that reports Network faults and outages in real time.

9. MAINTENANCE

9.1. Maintenance Plans

The Administrative Manager shall determine Network maintenance standards and responsibilities, subject to approval by the TRWC Board of Directors. The Area Managers are responsible for maintaining the Network equipment (not Subscriber Units) to the level of performance as determined by the Board of Directors. The Members shall be properly notified of any scheduled and unscheduled service affecting Network maintenance activities that have a potential impact to the operational capabilities of the Network or the subscriber's usage of the Network.

9.2. Emergency and Disaster Recovery

The Executive Director shall establish and maintain a disaster recovery plan, subject to approval by the TRWC Board of Directors.

9.3. Record-keeping Requirements

The Executive Director shall establish and maintain inventory and maintenance records for all elements of the Network.

9.4. Responsibility for Repair of Subscriber Equipment

Each Radio Network Participant is responsible for the maintenance and repair of its own Subscriber Units and related equipment. The TRWC policies and procedures for Network keys, encryption keys, and configuration programming shall apply when maintaining and repairing subscriber equipment.

10. GENERAL PROVISIONS

10.1. Limitations

Subject to applicable law, no TRWC director shall be liable to the TRWC for money damages for any action taken or any failure to take action as a director. To the extent permitted by law, the TRWC shall indemnify any officer, Executive Director, Administrative Manager, Area Manager, Representative, or Alternative Representative (each "Indemnified Party", collectively "Indemnified Parties") from any liability or expense sought or imposed because such person is made party to a proceeding because he/she is an officer, Executive Director, Administrative

Manager, Area Manager, Representative, or Alternative Representative of the TRWC. No Indemnified Party shall be personally liable to the TRWC or its Members for monetary damages for breach of fiduciary duty as a director, Officer, Executive Director, Administrative Manager, Area Manager, Representative, or Alternative Representative; provided, however, that this Section 10.1 shall not eliminate or limit the liability of an Indemnified Party to the extent provided by applicable law for (i) the amount of financial benefit received by an Indemnified Party to which the Indemnified Party is not entitled; (ii) an intentional infliction of harm on the TRWC or its membership; (iii) a violation of Section 10-833 of the Arizona Revised Statutes; or (iv) an intentional violation of Arizona law. The limitation of liability provided herein shall continue after the Indemnified Party has ceased to occupy such position as to acts or omissions occurring during such director's term or terms of office, and no amendment or repeal of this Section 10.1 shall apply to or have any effect on the liability or alleged liability of any Indemnified Party for or with respect to any acts or omissions of such Indemnified Party occurring prior to such amendment or repeal.

10.2. Dissolution

If the Board of Directors determines that it is not feasible or desirable to continue the TRWC activities, then assets of the TRWC shall be returned to the Members in proportion to their contributions to the TRWC.

10.3. Conflict Resolution

10.3.1. Mediation

If a complaint, dispute or controversy (hereinafter complaint) arises between any of the Parties to this Agreement, it is hereby agreed that the complaint shall be brought to the TRWC Board of Directors for non-binding conflict resolution. The Board of Directors shall have the authority to establish appropriate and reasonably prompt procedures to govern the processing of all complaints and an internal conflict resolution process.

The Parties agree that, at any point in the conflict resolution process, the Board of Directors may adopt and impose an interim emergency remedy to ensure the continuation of essential communication services until the matter is resolved.

Nothing in this Agreement shall prohibit any Party from seeking injunctive relief for the preservation of property. In the event any of the conflict resolution procedures are ruled unlawful or made unlawful by statute, the other terms of this Agreement are declared separate and severable and shall remain in full force and effect.

10.4. Insurance

The Area Managers, subject to the Board of Directors' approval, shall determine the appropriate insurance coverage for TRWC insurable assets and liability exposures.

10.5. Termination or Withdrawal

Any Member may voluntarily terminate its participation in the TRWC by providing twenty-four (24) months written notice to the Board of Directors; provided that the terminating Member: (a) relinquishes all Network equipment purchased or partially purchased by the TRWC; (b) transfers or relinquishes any unexpended TRWC Accounts which have been collected for the replacement of equipment; (c) pays all fees and charges owed to the TRWC up to and through the effective date of termination; and (d) agrees to such additional or alternative terms and conditions as may be unanimously established by all Parties, including the terminating Party.

10.6. Amendments to the Agreement

Any Member may propose an amendment to this Agreement to the Executive Director. The Executive Director will make a recommendation to the Board of Directors. The Board of Directors shall vote on any amendments brought to it by the Executive Director. An amendment to this Agreement shall be effective when approved by the Board of Directors. This Agreement may be amended by the Board of Directors by a vote of eighty percent (80%) of the Weighted Votes with at least three (3) members of the Board of Directors voting in favor of the amendment.

10.7. Entire Agreement

This Agreement contains the entire agreement and understanding among the Parties concerning the subject hereof and supersedes and replaces all prior negotiations, agreements and proposed agreements, written or oral, relating thereto. Each of the Parties hereto acknowledges that no other Party, nor any agent or attorney of any Party, has made any promise, representation, or warranty whatsoever, expressed or implied, not contained herein concerning the subject matter hereof, to induce it to execute this Agreement and acknowledges that this Agreement has not been executed in reliance on any promise, representation or warranty not contained herein. This Agreement shall not be amended, modified or supplemented at any time unless by in writing executed by the Parties hereto.

10.8. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts executed and intended to be performed entirely within the State of Arizona by residents of the State of Arizona. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision therefore shall be instituted only in the courts of Maricopa County, Arizona.

10.9. Counterparts

This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall become

effective upon execution of the Agreement by all parties. Upon full execution, the effective date of this Agreement shall be deemed May 1, 2012.

10.10. Headings

Article and section headings are inserted herein solely for convenience and the same shall not by themselves alter, modify, limit, expand or otherwise affect the meaning of any provision of this Agreement.

10.11. Assignment and Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that nothing herein shall relieve any Party of any obligation under this Agreement, except upon the express written consent of the TRWC.

APPENDIX A – Proposed Functional Organization Chart

